

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

R. KEITH CHRISTENSEN, Trustee, and )  
MARIAN I. CHRISTENSEN, Trustee, )  
  )  
  )  
Plaintiffs,                        )                                    8:03CV478  
  )  
  )  
vs.                                    )                                    ORDER  
  )  
  )  
UNITED STATES OF AMERICA,        )  
Department of the Interior,        )  
Bureau of Reclamation,            )  
  )  
  )  
Defendant.                        )

This matter is before the Court on the defendant's Motion for Leave to File Defendant's Renewed Motion for Summary Judgment (Filing No. 72).<sup>1</sup> The defendant filed a brief (Filing No. 77) in support of the motion. The defendant also filed a the renewed motion (Filing No. 73) with a supporting brief (Filing No. 74) and an index of evidence (Filing No. 75). The plaintiffs filed a brief (Filing No. 76) opposing the motion for leave.

In the motion for leave to file a renewed motion for summary judgment, the defendant states that no genuine issue of material fact exists and a decision on the renewed motion would conserve judicial resources and lead to a prompt resolution of the case. The plaintiffs oppose the motion for leave. The plaintiffs contend the issues raised by the defendant in the renewed motion for summary judgment have already been ruled upon by this Court in the Order of Judge Pratt on the defendant's first motion for summary judgment. Even so, the defendant argues the pretrial order does not list evidence in support of certain grounds Judge Pratt identified as remaining issues for trial.

The deadline for filing motions for summary judgment has long passed. **See** Filing No. 48. Both parties filed motions for summary judgment, which were ruled on by Judge Pratt. **See** Filing No. 59. The defendant then filed a partial motion for summary judgment, which the

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<sup>1</sup> The undersigned magistrate judge exercises jurisdiction over this matter after consent by the parties and transfer by United States District Court Judge Robert W. Pratt. **See** Filing No. 61.

plaintiffs conceded regarding the issue of a prescriptive easement. **See** Filing No. 62. The bench trial in this case is scheduled for August 2005. **See** Filing No. 68. Based on these circumstances, the court finds the defendant has failed to show good cause for filing a summary judgment motion out of time. **See** Fed. R. Civ. P. 16(b). Furthermore, Judge Pratt has already determined several material issues of fact remain for trial. If, at trial, the court determines additional issues may be decided as a matter of law, those issues may be determined at that time without a delay caused by the defendant's third motion for summary judgment. Finally, the parties may further narrow the issues for trial by agreement, if appropriate. Upon consideration,

**IT IS ORDERED:**

1. The defendant's Motion for Leave to File Defendant's Renewed Motion for Summary Judgment (Filing No. 72) is denied.
2. The Clerk of Court shall strike the defendant's Renewed Motion for Summary Judgment (Filing No. 73).

DATED this 13th day of June, 2005.

BY THE COURT:

s/Thomas D. Thalken  
United States Magistrate Judge